IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3239 of 2005
Date of Decision : 15.11.2007.

Kewal Krishan Pahwa and another .....Appellants

versus

Inderjit Singh .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.N.C.Kinra, Advocate for the appellants.
Mr.K.S.Dadwal, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit of the plaintiff for mandatory injunction directing the defendants to remove the unauthorized construction made by them on the wall marked as AE and for directing the defendants to remove the construction at portion marked CEFI and building marked as HIJK and for permanent injunction restraining the defendants from raising any construction on the wall marked as AE and on any other area owned and possessed by the plaintiff, HIJK, was decreed.

As per the facts on record, one Goverdhan Singh was owner in possession of House measuring 55 feet x 70 feet. After his death, the house was inherited by his two sons namely Inderjit Singh and Ranjit Singh. The suit for declaration was filed by Ranjit Singh against his brother Inderjit Singh. A compromise was effected between the parties and Inderjit Singh suffered a statement admitting Ranjit Singh to be owner of the house measuring 24 feet from South to North and 70 feet from West to East. The dividing wall was also constructed between the two portions by the two

brothers. Ranjit Singh sold his portion of the house to one Amrit Kaur vide sale deed dated 12.7.1991, Exhibit D-4. A dispute arose between Amrit Kaur and Inderjit Singh i.e. the present plaintiff and proceedings were initiated against each other. An agreement dated 16.8.1991, Exhibit P-1, was arrived at between the parties which was registered with the Sub Registrar. In terms of Clause 3 of the agreement, Amrit Kaur was not given any right to construct, interfere or install any building on the portion of Inderjit Singh adjoining to her property, on the ground floor and the first floor. Inderjit Singh was to withdraw all cases from the Court. Later on, Amrit Kaur had purchased the land measuring 7½ feet x 70 feet vide sale deed Exhibit P-3 dated 19.8.1991 from Inderjit Singh. Thus, Amrit Kaur had become owner of 24-½ -7½ feet x 70 feet of the portion of the property. Rajni Bala-defendant No.2 is purchaser from Amrit Kaur vide registered sale deed Exhibit D-2 dated 16.12.1991.

The Court found that in terms of the agreement Exhibit P-1, Amrit Kaur has agreed that she will not have any right to interfere or to raise any construction over the wall of Inderjit Singh. Therefore, she can convey such title as she has. Thus, the defendant cannot claim any right to raise construction over the wall of the plaintiff marked as AE.

Learned counsel for the appellants has vehemently argued that the agreement Exhibit P-1 relates to transfer the rights in the immovable property of value of Rs.100/- and is in the nature of relinquishment deed, therefore, the same is not admissible in evidence. It is also argued that the sale deed dated 16.12.1991, Exhibit D-2, has not been challenged by the plaintiff wherein right to raise construction of the wall is implicit. Still further, the suit for injunction is not maintainable as the construction has

been raised. Still further, the plaintiff is estopped to dispute the construction raised as the defendant has permitted the plaintiff to raise construction over the suit property.

Having heard learned counsel for the appellant at some length, I do not find any merit in the present appeal. The appellant No.2 is deriving her title over the suit property having purchased the same from Amrit Kaur vide registered sale deed Exhibit D-2 dated 16.12.1991. Amrit Kaur has got 24 feet x 70 feet of the property falling to the share of Ranjit Singh and another 7½ feet by virtue of separate sale deed from the plaintiff himself on 19.8.1991. Thus, from a plot of 55 feet x 70 feet, Amrit Kaur would be deemed to be owner to the extent of 31½ feet x 70 feet area.

The dispute between the parties was resolved by an agreement Exhibit P-1 executed on 16.8.1991. The said agreement is registered with the Sub Registrar. A perusal of the agreement Exhibit P-1 shows different terms and conditions of the use of the respective portions, doors and windows. By virtue of the said agreement, none of the parties has relinquished any interest in the immovable property. It binds the parties with the user of superstructure raised on the plots falling to their respective shares. The relevant clauses of the said agreement read as under:-

" xx xx xx xx

1. That Sh.Inderjit Singh (1st Party) residing in 141-R (A) will remove two doors from his wall from ground floor, Stairs case on ground floor and two doors on upper portion which opens towards property of Smt.Amrit Kaur w/o Sh.Kuldeep Singh, r/o 141-R(B) (Second party). All the repair cost of wall due to removal of doors will be borne by Smt.Amrit Kaur (Second Party).

2. That Sh.Inderjit Singh (1st Party) will give the rights to use only 12 square feet land (Pucca Lentered) at 1st floor adjoining the 1st floor portion of Smt.Amrit Kaur w/o Sh.Kuldeep Singh (second party).

3. Smt.Amrit Kaur w/o Sh.Kuldeep Singh (second party) will not have any right to construct, interfere and install any building on the walls of Sh.Inderjit Singh (1st party) adjoining to her property at the ground floor and first floor.

4. Mr.Inderjit Singh (First Party) will withdraw all the cases from the Court related with his property 141-R (B) which is under the possession of Smt.Amrit Kaur w/o Sh.Kuldeep Singh (Second Party).

5. Second party, Smt.Amrit Kaur, will not object any construction on the wall at Upper Portion.

xx xx xx xx"

It is condition No.3, reproduced above, which is relevant for the decision of the present appeal. The vendor of the appellants has recognized the fact that she will not have any right to construct, interfere and install any building on the wall of Shri Inderjit Singh (First Party) adjoining to her property on ground floor and the first floor. Therefore, vide the sale deed executed by Amrit Kaur in favour of the defendant-appellants subsequently in December, 1991, she has transferred only those rights which Amrit Kaur had with her on the said date. In other words, the limitation and restrictions, as undertaken by Amrit Kaur in agreement Exhibit P-1, would continue to be binding upon her successor in-interest as well. Therefore, in terms of the aforesaid agreement, the appellants cannot

derive any better title to what Amrit Kaur has in the suit property.

A perusal of the agreement does not show transfer of any right in the immovable property. The terms of the agreement, Exhibit P-1 are for cordial relations of the two neighbourers. Therefore, the agreement Exhibit P-1 cannot be considered to be relinquishment deed. Even if the same is considered to effect transfer of any rights in the immovable property, still there cannot be any objection to the admissibility of the said document in evidence as the said document is in fact, registered with the Sub Registrar. Therefore, I do not find any merit in the argument raised by learned counsel for the appellants.

The argument that the plaintiff is estopped to file the present suit as he has permitted the defendants to raise construction, is again not tenable. The parties are bound to honour the terms of the settlement arrived at between the parties in the year 1991. The defendants have not raised any plea of estoppel arising out of the construction having been made by the defendants. In the facts of the present case, the plea of estoppel is the mixed question of law and facts. Such plea was not raised before any of the Courts below. Therefore, the defendant-appellants cannot be permitted to raise a new plea based upon evidence, in the second appeal for the first time.

Thus, I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal. Consequently, the present appeal is dismissed in limine.

15-11-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**